

Exhibit C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

ASSOCIATION OF EQUIPMENT
MANUFACTURERS,
AGCO CORPORATION,
CNH INDUSTRIAL AMERICA LLC,
DEERE & COMPANY and
KUBOTA TRACTOR CORPORATION,

Plaintiffs,

Case No. 1:17-cv-00151-CSM

v.

THE HON. DOUG BURGUM, Governor
of the State of North Dakota,
in his Official Capacity,
-and-

THE HON. WAYNE STENEHJEM,
Attorney General of the State
of North Dakota, in his Official
Capacity,

Defendants,

-and-

NORTH DAKOTA IMPLEMENT
DEALERS
ASSOCIATION,

Intervenor.

AUDIOVISUAL DEPOSITION OF
MATTHEW LARSGAARD
TAKEN ON BEHALF OF PLAINTIFFS
March 8, 2018

* * *

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NORTH DAKOTA
3
4 ASSOCIATION OF EQUIPMENT
5 MANUFACTURERS,
6 AGCO CORPORATION,
7 CNH INDUSTRIAL AMERICA LLC,
8 DEERE & COMPANY, and
9 KUBOTA TRACTOR CORPORATION,
10 Plaintiffs, Case No. 1:17-cv-00151-CSM
11 v.
12 THE HON. DOUG BURGUM, Governor
13 of the State of North Dakota,
14 in his Official Capacity,
15 -and-
16 THE HON. WAYNE STENEHJEM,
17 Attorney General of the State
18 of North Dakota, in his Official
19 Capacity,
20 Defendants,
21 -and-
22 NORTH DAKOTA IMPLEMENT
23 DEALERS
24 ASSOCIATION,
25 Intervenor.

26 DEPOSITION OF MATTHEW LARSGAARD, produced,
27 sworn and examined on March 8, 2018, commencing at
28 9:44 a.m. and concluding at 4:27 p.m., at Doug
29 Ketcham & Associates, 51 Broadway, Suite 130,
30 Fargo, North Dakota 58102, before Shawn Weber,
31 Court Reporter and Notary Public.

1 APPEARANCES

2

3 ON BEHALF OF PLAINTIFFS

4 Timothy Q. Purdon

5 ROBINS KAPLAN LLP

6 1207 West Divide Avenue, Suite 200

7 Bismarck, ND 58503

8 612.349.8767

9 tpurdon@robinskaplan.com

10

11 ON BEHALF OF DEFENDANTS

12 Matthew A. Sagsveen (Via Telephone)

13 James E. Nicolai (Via Telephone)

14 OFFICE OF THE ATTORNEY GENERAL

15 500 North Ninth Street

16 Bismarck, ND 58501-4509

17 701.328.3640

18 msagsve@nd.gov

19 jnicolai@nd.gov

20

21

22 * * *

23

24

25

1 APPEARANCES (CONTINUING)

2

3 ON BEHALF OF INTERVENOR

4 Jason T. Allen

5 BASS SOX MERCER

6 2822 Remington Green Circle

7 Tallahassee, FL 32308

8 850.878.6404

9 jallen@dealerlawyer.com

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1 FARGO, NORTH DAKOTA

2 9:44 A.M

3 * * *

4 THE VIDEOGRAPHER: We are going on the
5 record.

6 The time is 9:44 a.m. The date is
7 March 8, 2018.

8 This is the videotaped deposition of
9 Matthew Larsgaard in the matter of
10 Association of Equipment Manufacturers,
11 et al. versus the Hon. Doug Bergum and the
12 Hon. Wayne Stenehjem in the U.S. District
13 Court for the District of North Dakota,
14 Case Number 1:17-cv-00151-CSM.

15 This deposition is being held at the
16 offices of Doug Ketcham & Associates
17 located at 51 Broadway, Suite 130, Fargo,
18 North Dakota.

19 My name is Nolan Wileman from
20 Sound Deposition Services with offices
21 located at 400 Ocean Gate Plaza, Suite 400,
22 Long Beach, California. The court reporter
23 is Shawn Weber.

24 Counsel, would you please introduce
25 yourselves and who you represent?

1 MR. PURDON: This is Tim Purdon,
2 Robins & Kap -- Robins Kaplan, representing
3 the plaintiffs in this matter.

4 MR. ALLEN: Jason Allen, Bass Sox
5 Mercer, on behalf of the defendant
6 intervenor.

7 MR. PURDON: Matt?

8 MR. SAGSVEEN: Matt Sagsveen on behalf
9 of State of North Dakota and the
10 aforementioned defendants.

11 THE VIDEOGRAPHER: Would the court
12 reporter please swear in the witness?

13 * * *

14 MATTHEW LARSGAARD, having been first
15 duly sworn and responding "yes," was
16 examined and testified as follows:

17 MR. PURDON: Good morning,
18 Mr. Larsgaard. Thank you for being here
19 today.

20 As you know, my name is Tim Purdon. I
21 represent the -- the tractor manufacturers
22 and AEM in this matter, and we're going to
23 jump into your deposition here this
24 morning.

25

1 The law firm that you're talking about, had
2 they represented you before they got involved in the
3 2289 issue?

4 A. What do you mean "represented me"?

5 Q. Provided you -- provided NDIDA legal
6 representation.

7 A. I don't know that they did.

8 Q. Okay. How did you get in contact -- I'm not
9 asking what anybody said. I'm not asking what a
10 lawyer said to you, but how did you get in contact
11 with that law firm -- why did you decide -- scratch
12 that question, ask it this way.

13 You contacted a law firm to assist you. How
14 did you pick that law firm?

15 MR. ALLEN: I'm going to object. This
16 -- and I appreciate you qualifying it with
17 this is tricky. This is getting very, very
18 close to the edge, and it's also -- you
19 probably saw in the discovery responses
20 that certain responses were objected to
21 under the privilege, too, and specifically
22 the first amendment privilege which allows
23 an association to deliberate and strategize
24 about proposed legislation.

25 So to the extent that this would impede

1 on any internal discussions regarding
2 SB2289, I'm going to ask you not to answer.

3 BY MR. PURDON:

4 Q. That's -- okay. But -- but if his brother
5 told him, you should call this lawyer, I don't think
6 that's privileged under either of the privileges.

7 So my question is, to the extent not
8 privileged, how did you choose the lawyer that you
9 went to, to discuss the drafting of 2289?

10 MR. ALLEN: And I would just instruct
11 you the same thing. To the extent that the
12 association's decision was made through
13 discussion, internal discussion about
14 proposed legislation, I'm going to instruct
15 you not to answer.

16 So if you can answer, feel free.
17 Otherwise ...

18 THE DEPONENT: So having been in the
19 industry since 2006, you become aware of
20 law firms that work in different areas, law
21 firms that have assisted dealers, maybe
22 assisted manufacturers, and so you have a
23 general idea of who's in the industry.

24 BY MR. PURDON:

25 Q. So based on your knowledge of the industry

1 THE DEPONENT: Yeah, so we just covered
2 that like minutes ago, right? So, yeah,
3 communicated the issues to the law firm
4 after we had identified what some of those
5 dealer concerns were.

6 BY MR. PURDON:

7 Q. Were there any writings memorizing your
8 concerns?

9 A. I just don't remember right now how the
10 initial communications were initiated.

11 Q. Right. So that's a different question.

12 A. Okay.

13 Q. Was there any document that you drafted
14 before you talked to a lawyer that had your first
15 stab at what 2289, what would become 2289?

16 MR. ALLEN: And again, please note my
17 previous objections to the extent that that
18 document was prepared by the association
19 with respect to proposed legislation, I'm
20 going to instruct you not to answer. To
21 the extent you can answer, please feel free
22 to try to do so.

23 THE DEPONENT: Okay.

24 MR. ALLEN: If such a document exists
25 that he's asking about.

1 THE DEPONENT: I cannot think of -- I
2 cannot think of any specific document that
3 I would have sent to the law firm.

4 BY MR. PURDON:

5 Q. Okay. So I'm going to ask you some
6 questions, and the answer to all these might be no,
7 but I'm going to try to jog your memory, because you
8 seem to be sort of "I can't really remember." So
9 maybe this will help.

10 A. Sure.

11 Q. Do you recall taking the old dealer statute,
12 printing it off and maybe sitting down with a pencil
13 and changing things? Did you ever do anything like
14 that, you ever do you anything like that?

15 A. I am in the dealer statutes from time to
16 time throughout the year, and so as dealers present
17 concerns to me, I review the statutes and visit with
18 them about the statute. And if it's ever unclear or
19 if there's ever a question that needs an attorney to
20 answer it, since I'm not an attorney, then we engage
21 counsel accordingly.

22 Q. Can you tell me the name of the law firm you
23 asked to assist you in drafting 2289?

24 A. I can.

25 Q. Will you?

1 their concerns were, they would have shared that
2 information with you.

3 A. Yes, sir.

4 Q. And you may have a copy of that?

5 A. I may, yeah. Yeah, I may.

6 Q. Okay. Setting -- and I'm going to talk
7 before you engaged Mr. Allen's law firm to help with
8 you 2289, had you discussed proposed language with
9 anyone who was not an attorney before you -- before
10 that?

11 MR. ALLEN: Same objection as it
12 relates to internal association
13 communications. I'm going to instruct you
14 not to answer that. Otherwise, feel free
15 to answer the question, though.

16 THE DEPONENT: You know, I talk to a
17 lot of different individuals. I mean,
18 that's what I do.

19 BY MR. PURDON:

20 Q. Right.

21 A. So I can't think of any specific -- could
22 you say the question one more time?

23 Q. I'm asking about specific language. Did you
24 show anybody language, did you say hey, get me what
25 you -- send me an e-mail of what you want in the

1 bill. I'm talking about any specific discussions of
2 specific language not with a lawyer and prior to
3 engaging Mr. Allen's law firm?

4 A. You know, as I consider -- I can't remember
5 any specific discussions.

6 Q. Was specific language ever discussed at any
7 NDIDA board meetings before you retained Mr. Allen?

8 MR. ALLEN: Same objection. I'm going
9 to instruct you not to answer on the basis
10 of the first amendment privilege.

11 MR. PURDON: Well, Jason, let me posit
12 this. I'd like to establish that there
13 were discussions. Because if there
14 weren't, then it's a different world,
15 right?

16 MR. ALLEN: Okay.

17 MR. PURDON: I'd like to establish
18 there were discussions. And I think my
19 question was a yes or no one and then I
20 understand what you're saying.

21 MR. ALLEN: So you're seeking to
22 establish whether discussions occurred, not
23 the substance of the discussions?

24 MR. PURDON: Exactly.

25 MR. ALLEN: Okay.

1 A. Yep, so he was the president.

2 Q. Yeah.

3 A. So did he call me to discuss the details of
4 the bill after it was introduced?

5 Q. Yep.

6 A. I don't think Rick did, no.

7 Q. Did -- did anybody from EDA call you to
8 discuss the bill after it was introduced?

9 A. I don't remember any specific discussions.
10 Yeah, I don't remember any specific discussions.

11 Q. Did you -- did you tell your members in --
12 prior to the introduction of the bill, the drafting
13 of the bill in 2017?

14 A. Uh-huh.

15 Q. Prior to that point in time did you tell any
16 the members of NDIDA that you were drafting that
17 legislation?

18 MR. ALLEN: I'm going to instruct you
19 not to answer pursuant to the first
20 amendment privilege as it relates to
21 discussions with your members regarding the
22 introduction of legislation. To the extent
23 you can provide an answer as to perhaps
24 whether your members were aware, I don't
25 know if that satisfies your question, but

1 otherwise I'm going to instruct you not to
2 answer.

3 BY MR. PURDON:

4 Q. Right. So my question was yes or no, did
5 you communicate, I want to establish if there were
6 communications.

7 So did you communicate to your members
8 before the bill dropped that there was -- that you
9 were drafting legislation? Yes or no question.

10 A. The members would have voted for
11 legislation.

12 Q. The members of board or the members of the
13 whole NDIDA?

14 A. The members would have known, the members of
15 NDIDA.

16 Q. So -- so you took a vote of your membership
17 on whether or not to introduce legislation?

18 A. The communication -- let me rephrase that.
19 The communication, I don't remember exactly what that
20 communication would have been, but we would have
21 communicated with membership to identify their
22 concerns, what the issues were. Also thinking back
23 to that article as well that we'd sent out. Could
24 you -- tell you what, could you rephrase the question
25 again, Tim?

1 Q. You said the members would have voted. I
2 guess I don't understand what you would mean when you
3 say "voted." I'm assuming the board of directors
4 voted to authorize this action?

5 A. The membership did. The membership voted to
6 authorize legislation.

7 Q. How did you conduct this election?

8 A. Through e-mail.

9 Q. So how many -- is this universe of 55 to 60
10 voters then that you identified as your membership?

11 A. It would be just -- so yeah, exactly the 55
12 yeah, exactly, the 55 dealers, the 110 rooftops,
13 that's where it gets broken up, but ...

14 Q. Did they vote by rooftop or by member?

15 A. Each store is a member so it would be by
16 rooftop.

17 Q. So there would be 115, 110, 115 votes?

18 A. Typically.

19 Q. Typically, do you often poll the membership
20 and have them vote on issues this common?

21 A. No, it's not.

22 Q. Okay.

23 A. Yeah.

24 Q. Did the board ask you or empower you or
25 order you to -- to have this election before you

1 could move forward?

2 MR. ALLEN: I'm going to instruct you
3 not to answer that based on the first
4 amendment privilege.

5 BY MR. PURDON:

6 Q. So you e-mailed -- sent out an e-mail asking
7 for a yes or no vote, is that how this worked?

8 A. I'd have to try to remember what's exactly
9 within that e-mail, Tim, but it was -- it was an
10 e-mail that was specific to concerns that were
11 addressed in the legislation and identifying whether
12 or not the concerns that ended up in the bill were
13 indeed industry-wide or I guess North Dakota wide,
14 industry-wide concerns that dealers would want
15 addressed.

16 Q. Did this election take place -- can you tell
17 me when, ballpark, this election took place?

18 A. Summer or Fall of '16.

19 Q. After you'd engaged the law firm?

20 A. Yes.

21 Q. Did you send around a draft of the bill?

22 A. No.

23 Q. Did you send around an e-mail explaining
24 what was potentially going to be in the bill?

25 A. I believe the e-mail contained identified --

1 MR. ALLEN: He's asking you yes or no
2 questions. He's not asking you substance.
3 To the extent you want to provide him
4 substance, I'm going to instruct you not to
5 answer.

6 THE DEPONENT: Okay. Could you restate
7 the question?

8 BY MR. PURDON:

9 Q. Did the e-mail that you sent around have a
10 description of what was likely to be in the bill?

11 A. I don't remember what exactly was in that
12 e-mail.

13 Q. Did everybody -- so they just voted by
14 sending a reply e-mail?

15 A. Correct.

16 Q. What was the vote total?

17 A. I don't remember.

18 Q. Was it a landslide, or was it close?

19 A. It was majority.

20 Q. Right. But majority can be 50.1 percent.

21 A. I don't remember what the vote total was.

22 Q. There were members who voted against it?

23 A. No, there were not.

24 Q. Oh, I see what you're saying. So how many
25 votes were cast?

1 purge e-mails?

2 MR. ALLEN: I'm just going to instruct
3 you not to answer.

4 MR. PURDON: That's fair.

5 BY MR. PURDON:

6 Q. Besides the election of -- this election --
7 no, we'll move off that.

8 Did any NDIDA members express concern over
9 the drafting of 2289?

10 A. None.

11 Q. Did any NDIDA members object to you
12 introducing Senate Bill 2289?

13 A. None.

14 Q. Did any individuals condition their support
15 of 2289 on the exclusion or inclusion of any certain
16 terms?

17 MR. ALLEN: I'm just going to instruct
18 you not to answer to the extent it gets
19 into substance of communications with your
20 members.

21 BY MR. PURDON:

22 Q. But I'm just asking for a yes or no
23 question.

24 MR. ALLEN: But your yes or no question
25 contains the inform -- specific

1 information. That's the problem. It's not
2 just yes or no, did you communicate with
3 your members. It's yes or no, did you
4 communicate with your members about
5 specific items.

6 MR. PURDON: All right. I don't know
7 that you're right about that. I'll note an
8 exception, but we'll -- we're not going to
9 solve it here today between you and I.

10 BY MR. PURDON:

11 Q. Have you ever heard Senate bill 2289
12 referred to as "Farm Equipment Dealer Bill of
13 Rights"?

14 A. Yes.

15 Q. Have you ever used that term?

16 A. I may have.

17 Q. What does that mean to you?

18 A. What it means to me is that it's -- it's a
19 bill that is intended to create a level of equity
20 with respect to the relations of the manufacturers
21 and the public interest of North Dakota.

22 Q. And the rights that you're talking about
23 here, where do these rights come from?

24 A. Rights granted by the legislature of
25 North Dakota.

1 Q. Yes. Right, besides your --

2 A. I was the only one that represented NDIDA
3 besides dealers that testified.

4 Q. I'm talking about registered lobbyists,
5 people being paid for their time.

6 A. No, no. Just me.

7 Q. Just you?

8 A. Yep.

9 Q. Did you direct or assist any of your members
10 in lobbying any members of the committee or
11 committees or State legislators in connection with
12 2289?

13 MR. ALLEN: I'm going to object, and
14 I'm going to instruct you not to answer
15 pursuant to the first amendment privilege
16 to the extent you had communications,
17 internal communications with your members
18 regarding lobbying decisions and things of
19 that nature.

20 BY MR. PURDON:

21 Q. So let me establish whether or not any such
22 communications took place. Did you ever send e-mails
23 to your members? I don't know want to know what the
24 e-mails said at this point subject to his objection.
25 Let me ask it this way, were there communications to

1 Q. Consent to jurisdiction. I'm sorry, page
2 950. I'm sorry, I changed pages on you.

3 A. 950. Okay. So what's your conclusion --
4 what's your statement?

5 Q. So the -- the -- the dealers who were being
6 offered the new Case New Holland contract, if they'd
7 have filed a lawsuit, they could have -- they could
8 have filed in North Dakota, correct? There was no
9 arbitration provision in the new -- in the -- under
10 old law, right?

11 MR. ALLEN: I'd just note my continued
12 objection.

13 THE DEPONENT: I don't know the answer
14 to that, Tim.

15 BY MR. PURDON:

16 Q. Okay.

17 A. You know, when I put this together, I mean,
18 that was more than two years ago, and you know, I do
19 research on different issues. You educate yourself
20 and then time moves on and you don't remember all the
21 details to ...

22 Q. Was there an advantage, do you think,
23 strategically of -- of NDIDA deciding to seek new
24 legislation through 2289 as opposed to challenging
25 the onerous, the provisions you've described as

1 onerous in the new Case IH contract in a lawsuit?

2 MR. ALLEN: Object to the line of

3 questioning to the extent it seeks

4 legislative strategy, discussions with --

5 internal discussions with their members and

6 calls for a legal conclusion. So I'm going

7 to instruct you not to answer to the extent

8 you had discussions with your members about

9 the legislation itself, then to the extent

10 whether or not if there's an advantage

11 calls for a legal conclusion. So you can

12 answer if you can.

13 BY MR. PURDON:

14 Q. So my question is not -- and let me --

15 I'll -- I'll narrow my question.

16 Do you see -- I don't want to know about any

17 discussions or anything that you had with anybody,

18 but do you think that back in February of 2016 as you

19 were thinking about what to do next, you got this

20 issue, you don't like this contract from Case New

21 Holland, your members don't like it, EDA is done with

22 their negotiation, did you feel under pressure to do

23 something to protect your members at that point?

24 A. I don't remember what my feelings were at

25 that point in time.

1 don't have anything further.

2 MR. PURDON: I don't either. We'll go
3 off the record.

4 Do you want to talk to him about
5 reading and signing?

6 MR. ALLEN: Yep. We'll read and sign.

7 THE REPORTER: Noted. Thank you.

8 THE VIDEOGRAPHER: We're going off the
9 record. The time is 4:27 p.m.

10 (Deposition concluded at 4:27 p.m.)

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1 NOTARY REPORTER'S CERTIFICATE

2 STATE OF NORTH DAKOTA

3 COUNTY OF CASS

4 I, Shawn D. Weber, a Notary Public within
5 and for the County of Cass and State of North Dakota
6 do hereby certify: That the afore-named witness was
7 by me sworn to testify the truth, the whole truth,
8 and nothing but the truth.

9 That the foregoing 300 pages contain an
10 accurate transcription of my shorthand notes then and
11 there taken.

12 I further certify that I am neither related
13 to any of the parties or counsel, nor interested in
14 this matter directly or indirectly.

15 WITNESS my hand and seal this 23rd day of
16 March, 2018.

17

18

19 Shawn D. Weber

20 Notary Public

21 Fargo, North Dakota

22 THE FOREGOING CERTIFICATION OF THIS TRANSCRIPT DOES
23 NOT APPLY TO THE REPRODUCTION OF THE SAME BY ANY
24 MEANS, UNLESS UNDER THE DIRECT CONTROL AND/OR
25 DIRECTION OF THE CERTIFYING COURT REPORTER.